

PORT OF SILVERDALE
Resolution 2020- 05

ADOPTING PURCHASING POLICIES AND PROCEDURES
FOR PUBLIC WORKS

To update its policies and procedures for purchasing public works, in compliance with revised state laws and regulations, the Port of Silverdale Commission hereby adopts the below policies and procedures:

A. PUBLIC WORKS.

When authorizing a public works project, the Port shall decide to use one of the following processes described below: Minimal Competition, Limited Public Works, Small Works Roster, Unit Price Contract, or Competitive Bid.

1. Minimal Competition - Contracts to \$40,000 - RCW 53.08.120(2)(c)

- a. This applies to public works as defined in RCW 39.04.010 (all work, construction, alteration, repair, or improvement other than ordinary maintenance, . . . including maintenance when performed by contract)
- b. The estimated cost of the work or improvement, including cost of materials, supplies, and equipment, may not exceed \$40,000.
- c. A "public works project" means a complete project – a project may not be divided into units of work or classes of work to avoid calling for bids.
- d. A contract may be awarded without calling for bids.
- e. The Port must use best efforts to reach out to qualified contractors, including certified minority and woman-owned contractors.
- f. Contractors may be selected from the small works roster, and the Port may require a contractor to register in the small works roster before executing a contract.

2. Limited Public Works – Contracts estimated under \$50,000 – RCW 39.04.155(3)

- a. This applies to work, construction, alteration, repair, or improvement projects estimated to cost less than \$50,000.

- b. Breaking any project into units or accomplishing any project by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the limited public works process.
- c. The Port will solicit electronic or written quotations from at least 3 contractors from the small works roster.
- d. A contract will be awarded to the lowest responsible bidder per RCW 39.04.350.
- e. After the contract is awarded, quotations will be open to public inspection and electronic request.
- f. The Port will keep a list of contractors contacted and contracts awarded during the prior 24 months (name of contractor, contractor's registration number, amount of contract, brief description of type of work performed, and date contract awarded).
- g. The Port will make available a list of the contracts awarded under the small works process at least once every year. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection. [RCW 39.04.200]
- h. The Port may waive payment and performance bond requirements of RCW 39.08 and retainage requirements of RCW 60.28.011(1)(a), thereby assuming liability for contractor's nonpayment of laborers, mechanics, subcontractors, material persons, suppliers, and taxes, increases, and penalties imposed under Titles 50, 51, and 82 RCW that may be due from the contractor for the limited public works project, however the Port will have the right of recovery against the contractor for any payments made on the contractor's behalf.

3. Small Works Roster – Contracts up to \$350,000 – RCW 39.04.155(2)

- a. A Small Works Roster Policy to Award Public Works Contracts was adopted by the Port as Resolution 2002-01 when the contract limit was \$200,000 and updated by Resolution 2013-01 after the contract limit increased to \$300,000. Resolution 2013-01 [Attachment A] is reaffirmed, and it is incorporated herein by this reference, except to change the estimated contract limit stated in paragraph 1 of Resolution 2013-1 to \$350,000 to conform to the recent change in RCW 39.04.155(1), and to use the latest version of the lowest responsible bidder criteria in RCW 39.04.350 [Attachment C].

- b. The Small works Roster includes all responsible (and licensed or registered if required) contractors who have requested to be on the list. The Port may require contractors to keep current records of applicable licenses, certifications, registrations, bonding, insurance, etc. on file as condition of being on roster. At least once a year the Port publishes in a local newspaper a notice of the existence of the small works roster and invites contractors to register. Responsible contractors are added to the roster any time they submit a request and records required by the Port.
- c. The Port will invite quotations from all appropriate contractors on the Port's small works roster, or from at least 5 contractors on the small works roster in a manner that will equitably distribute opportunity among contractors on the roster ("equitably distribute" means that the Port in soliciting bids may not favor certain contractors on the small works roster over other contractors on the small works roster who perform similar services). If there are less than 5 appropriate contractors on the small works roster, the Port will document its best efforts to broaden the scope of solicitation.
- d. If the estimated cost of the work is from \$250,000 to \$350,000 and the Port chooses to solicit bids from less than all the appropriate contractors on the small works roster the Port will also notify the remaining contractors on the small works roster that quotations on the work are being sought. The Port will determine whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or email.
- e. A contract awarded from a small works roster under this process need not be advertised.
- f. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone or electronic request.
- g. For projects awarded under this Small Works Roster process the Port may waive payment and performance bond requirements of RCW 39.08 and retainage requirements of RCW 60.28.011(1)(a), thereby assuming liability for contractor's nonpayment of laborers, mechanics, subcontractors, material persons, suppliers, and taxes, increases, and penalties imposed under Titles 50, 51, and 82 RCW that may be due from the contractor for the project; however, the Port will have the right of recovery against the contractor for any payments made on the contractor's behalf. Recovery of unpaid wages and benefits are the first priority for actions filed against the contract.

4. Unit Priced Contracts – Hourly Rates or Unit Pricing - RCW 53.08.120(3)

- a. The Port may procure public works with a unit priced contract under RCW 53.08.120 or RCW 39.04.010(2) for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.
- b. Unit priced contract means a competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of the Port, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price, for each category of work.
- c. Unit priced contracts must be executed for an initial contract term not to exceed three years, with the Port having the option of extending or renewing the unit priced contract for one additional year.
- d. Invitations for unit priced bids shall include, for purposes of the bid evaluation, estimated quantities of the anticipated types of work or trades, and specify how the Port will issue or release work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the hourly rates or unit prices bid by the contractor.
- e. Contracts must be awarded to the lowest responsible bidder as per RCW 39.04.010.
- f. Whenever possible, the port district must invite at least one proposal from a minority or woman contractor who otherwise qualifies under this section.
- g. Unit priced contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the prevailing wage rates in effect at the beginning date for each contract year. Unit priced contracts shall have prevailing wage rates updated annually. Intents and affidavits for prevailing wages paid shall be submitted annually for all work completed within the previous twelve-month period of the unit priced contract.

5. Competitive Bid – Estimated over \$300,000 – RCW 53.08.120(2)(a)

- a. Where estimated public works contracts exceed \$300,000 the Port must use a competitive bid process [Note – this conflicts with RCW 39.04.155(1) which allows small works roster contracts where estimated cost is up to \$350,000 – future legislation will be required to reconcile].
- b. The Port will publish notice at least 13 days before last date bids to be received. The notice calls for bids upon the described work and either plans are on file in the Port

office for public inspection OR bids are for work and/or material based upon plans submitted by the bidder.

- c. The Port will award the contract to the responsible lowest bidder.

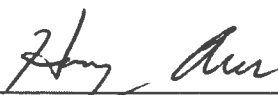
6. General Public Works Provisions

- a. For public works projects of \$25,000.00 or less the Chairman has authority to award public works contracts without the Port of Silverdale Commission's prior approval; provided that the Port of Silverdale Commission shall ratify the Chairman's approval at the next scheduled meeting of the Port as a consent agenda item.
- b. For public works projects over \$25,000.00 the Port of Silverdale Commission will award contracts by resolution.
- c. The Port Administrator has authority to solicit public works contracts for approved projects and to prepare and execute the contract and any necessary routine documents incidental to a contract, such as notices and information, in compliance with Port decisions and policies. See Public Works Contract Guide [Attachment B].
- d. Bidder responsibility criteria and sworn statement, set out in RCW 39.04.350 [Attachment C], must be applied in all public works bids.
- e. Prevailing Wages - All public works contracts and public building service maintenance contracts must include specifications requiring the payment of prevailing wages to all workers employed in any part of the contract. The specifications must either list all of the applicable prevailing wage rates, or else provide the URL address for L&I's Prevailing Wage Rates for Public Works Contracts with the exact wage publication date and county. If referring contractors to the L&I website, the Port should retain a printed version of the rates as part of its records and state that a copy is available for viewing in the agency's office and that the agency will mail a hard copy upon request. [RCW 39.12.030]
- f. Every contractor and subcontractor on a public works project must file a Statement of Intent to Pay Prevailing Wages with Labor and Industries (L&I) immediately after the contract is awarded and before work begins; the Port may not make payments under the contract until the contractor has submitted an approved Statement of Intent – and this requirement will be stated in the specifications and contract. For contracts exceeding \$10,000, contractors must post the Statement of Intent in a location readily visible to workers at the job site. [RCW 39.12.040]

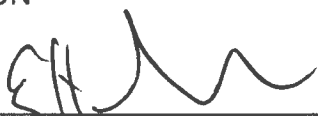
- g. Every contractor and subcontractor on the public works project must file an Affidavit of Wages Paid soon after the work is completed; the Port may not release the retainage until the Affidavit of Wages Paid is filed. Combined intents and affidavits forms for public works projects up to \$50,000 if only one payment will be made and there are no subcontractors. [RCW 39.12.040]
- h. Emergencies - Competitive bidding requirements may be waived by the Port for emergency and other circumstances set forth in RCW 39.04.280. If the Port commissioners elect to waive competitive bidding requirements by the terms of written policies adopted by the Port for non emergency situations, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.
- i. If an emergency exists, the person or persons designated by the Port commission to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the Port to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the Port commission or its designee and duly entered of record no later than two weeks following the award of the contract. An "emergency" means unforeseen circumstances beyond the control of the Port that either: (a) present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.
- j. All material and work required by the Port not meeting the definition of public work in RCW 39.04.010(4) may be procured in the open market or by contract and all work ordered may be done by contract or day labor. [RCW 53.08.120(1)]

ADOPTED by the Port Silverdale Commission on MAY 21, 2020.

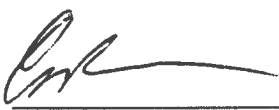
PORT OF SILVERDALE
KITSAP COUNTY, WASHINGTON



Henry Aus
Commissioner



Ed Scholfield
Commissioner



Caleb Reese
Commissioner

PORT OF SILVERDALE
Resolution 2013-01

Small Works Roster Policy to Award Public Works Contracts

WHEREAS, RCW 39.04.155 requires that the Port of Silverdale (Port) adopt a resolution establishing specific procedures for implementing its small works roster process;

NOW, THEREFORE, THE COMMISSION OF THE PORT OF SILVERDALE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

The following small works roster procedures are established for use by the Port pursuant to RCW 53.08.120, RCW 53.08.130, RCW 53.08.135 and Chapter 39.04 RCW.

1. **Cost.** The Port need not comply with formal sealed bidding requirements for the construction, building, renovation, remodeling, alteration, repair or improvement of real property where the estimated cost does not exceed three hundred thousand dollars (\$300,000.00), which includes the costs of labor, material, equipment and sales and/or use taxes as applicable. Instead, the Port of Silverdale may use its small works roster and procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process.
2. **Number of Rosters.** The Port may create a single general small works roster or may create a small works roster for different specialties or categories of anticipated work. Said small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor.
3. **Contractors on Small Works Roster(s).** The small works roster(s) shall consist of all responsible contractors who have requested to be on the roster(s), and where required by law are properly licensed or registered to perform such work in this state. Contractors desiring to be placed on a roster or rosters must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the Port as a condition of being placed on a roster or rosters.
4. **Responsibility Defined.** The Chairman of the Port of Silverdale Commission or his designee may determine that a contractor is not eligible for placement on a small works roster if the contractor does not meet one or more of the following requirements. Responsible contractors must:
 - a. Have the ability, capacity and skill to perform work in the area covered by the roster or rosters;

- b. Have performed quality work on previous contracts or service agreements:
 - c. Be able to demonstrate previous and existing compliance with laws relating to public works, or the type of work or service covered by the roster or rosters; and
 - d. Have maintained a civil and professional work climate, free from harassment and intimidation, on job sites and with Port personnel.
5. **Publication.** At least once a year, the Port shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records. The Port may require master contracts to be signed that become effective when a specific award is made using a small works roster. An interlocal contract or agreement between the Port of Silverdale and other local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the small works roster provisions.
6. **Telephone or Written Quotations.** The Port shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 43.19.1911, as follows:
- a. A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other requirements of architectural or engineering approvals as to quality and compliance with building codes.
 - b. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster.
 - c. For purposes of this resolution, “equitably distribute” means that the Port may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. Until all bids are opened or published, and/or the bidding

process is closed, the Port's representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.

- d. A written record shall be made by the Port's representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. A list of bid awards shall be posted and available to the public at least bi-monthly.
- e. At least once every year a list of the contracts awarded under that process is to be furnished to the Port of Silverdale Commission and made available to the general public. The list shall contain the name of the contractor awarded the contract, the amount of the contract, a brief description of the type of work performed, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection.

7. Determining Lowest Responsible Bidder. The Chairman of the Port of Silverdale Commission or his designee shall award the contract for the public work project to the lowest responsible responsive bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the Port of Silverdale Commission may call for new bids. In addition to price, the Port of Silverdale Commission shall take into account the following (as provided by RCW 43.19.1911 adopted by reference in RCW 39.04.155):

- a. Any preferences provided by law to Washington products and vendors [RCW 43.19.1911(7)];
- b. The quality of the articles proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery;
- c. The ability, capacity, and skill of the bidder to perform the contract [RCW 43.19.1911(9)];
- d. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- e. Whether the bidder can perform the contract within the time specified by the Port;
- f. The quality of the bidder's performance of previous contracts or services;
- g. The previous and existing compliance by the bidder with laws relating to the contract or services;

h. Such other information as may be secured having a bearing on the decision to award the contract.

8. **Award.** The Chairman of the Port of Silverdale Commission or his designee shall present all telephone quotations/bids and recommendation for award of the contract to the lowest responsible bidder to the Port of Silverdale Commission. However, for public works projects of \$25,000.00 or less, the Chairman shall have the authority to award public works contracts without the Port of Silverdale Commission's prior approval, provided that the Port of Silverdale Commission shall ratify the Chairman's approval at the next scheduled meeting of the Port of Silverdale Commission by means of the consent agenda. For public works project works projects over \$25,000.00, the Port of Silverdale Commission shall award all public works contracts by resolution.

ADOPTED by the Port of Silverdale Commission on _____, 2013.

PORT OF SILVERDALE
KITSAP COUNTY, WASHINGTON

By:

Ed Scholfield, Chairman

Henry Aus, Commissioner

Lawrence Greaves, Commissioner

Public Works Contract Guide

1. Prepare - Invitation for Quotations
 - a. Set date for Quotation opening on Port Commission meeting date
 - b. Set date for Quotation submittal date before opening
 - c. Set date for on site visit about 2 weeks before opening
 - d. Complete Attachment A, describing work to be performed
2. Mail and/or email Invitation for Quotations
 - a. To at least 3 applicable specialty contractors on small works roster
3. Set up site visit for all interested contractors
 - a. Respond to all questions by email to all interested contractors (so all have the same information)
4. Keep strict compliance with due date/time for quotations
 - a. Waiver can cause contractor complaint
5. Open quotations on date set at Port Commission meeting
 - a. Put on Port agenda at 7:00 pm
 - b. Verify that information is complete & submittal requirements are met
 - c. Pick lowest **qualified** bid, need motion adopted to award contract
 - d. If no bid qualifies, reject all bids and decide whether to rebid or change project
6. Send Notice of Award (..\Forms\Form - Notice of Award - Limited Public Works.doc) to successful bidder
 - a. Have attached Acceptance of Notice signed and returned (fax or email ok)
7. Prepare Limited Public Works Contract (..\Forms\Form - Port Limited Public Works Contract.doc)
 - a. Decide whether to waive performance bond and/or retainage requirements
 - b. Get signed by contractor and Port chair
 - c. Within 15 days contractor returns signed contract, Insurance and Bond (or waiver)
 - d. Have contractor sign Retainage Investment option statement
8. Prepare Notice to Proceed
 - a. Starts "clock" of contract time ticking toward Substantial Completion
9. Obtain Statement of Intent to Pay Prevailing Wages posted online by L&I
 - a. Must be received (also online at L&I) before first payment to contractor
10. Prepare Change Order if needed
11. Issue Acceptance Letter after inspection and approval
12. Review Affidavit of Wages Paid (L&I form) – posted online by L&I
13. Make final payment, except for retained percentage

- a. Send Final Payment Letter with payment, showing calculation of retained percentage
 - b. Place retained percentage into account specified by contractor
14. Prepare Request For Payment Of Retained Percentage & Release Of Claims
 - a. Send by email for contractor to print & sign
15. Release contract retainage to contractor

RCW 39.04.350 Bidder responsibility criteria—Sworn statement—Supplemental criteria.

*** CHANGE IN 2020 *** (SEE 6239.SL) ***

(1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;

(f) Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its web site. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption; and

(g) Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.

(2) Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with chapter 5.50 RCW verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

(3) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(4) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site. [2019 c 232 § 15; 2018 c 243 § 1; 2017 c 258 § 2; 2010 c 276 § 2; 2009 c 197 § 2; 2007 c 133 § 2.]

NOTES:

Effective date—2018 c 243: "This act takes effect July 1, 2019." [2018 c 243 § 2.]

Findings—2017 c 258: "The legislature finds that government contracts should not be awarded to those who knowingly and intentionally violate state laws. The legislature also finds that businesses that follow the law and pay their workers appropriately are placed at a competitive disadvantage to those who reduce costs by willfully violating the minimum wage act and wage payment act. In order to create a level playing field for businesses and avoid taxpayer contracts going to those that willfully violate the law and illegally withhold money from workers, the state should amend the state responsible bidder criteria to consider whether a company has willfully violated the state's wage payment laws over the previous three years." [2017 c 258 § 1.]